

### 209.470-3

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

[65 FR 2056, Jan. 13, 2000]

#### 209.470-3 Procedures.

If the Secretary of Defense determines that an institution of higher education is ineligible to receive DoD funds because of a policy or practice described in 209.470-2(a)—

(a) The Secretary of Defense will list the institution on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by General Services Administration (also see FAR 9.404 and 32 CFR part 216); and

(b) DoD components—

(1) Shall not solicit offers from, award contracts to, or consent to subcontracts with the institution;

(2) Shall make no further payments under existing contracts with the institution; and

(3) Shall terminate existing contracts with the institution.

[65 FR 2057, Jan. 13, 2000, as amended at 67 FR 49254, July 30, 2002]

#### 209.470-4 Solicitation provision and contract clause.

(a) Use the provision at 252.209-7003, Reserve Officer Training Corps and Military Recruiting on Campus—Representation, in all solicitations with institutions of higher education.

(b) Use the clause at 252.209-7005, Reserve Officer Training Corps and Military Recruiting on Campus, in all solicitations and contracts with institutions of higher education.

[77 FR 19129, Mar. 30, 2012]

#### 209.471 Congressional Medal of Honor.

In accordance with Section 8118 of Pub. L. 105-262, do not award a contract to, extend a contract with, or approve the award of a subcontract to any entity that, within the preceding 15 years, has been convicted under 18 U.S.C. 704 of the unlawful manufacture or sale of the Congressional Medal of Honor. Any entity so convicted will be listed as ineligible on the List of Parties Excluded from Federal Procurement and Non-

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procurement Programs published by the General Services Administration.

[64 FR 31733, June 14, 1999]

## Subpart 209.5—Organizational and Consultant Conflicts of Interest

SOURCE: 73 FR 1824, Jan. 10, 2008, unless otherwise noted.

### 209.505 General rules.

#### 209.505-4 Obtaining access to proprietary information.

(b) Non-disclosure requirements for contractors accessing third party proprietary technical data or computer software are addressed at 227.7103-7(b), through use of the clause at 252.227-7025 as prescribed at 227.7103-6(c) and 227.7203-6(d). Pursuant to that clause, covered Government support contractors may be required to enter into non-disclosure agreements directly with the third party asserting restrictions on limited rights technical data, commercial technical data, or restricted rights computer software.

[76 FR 11367, Mar. 2, 2011]

#### 209.570 Limitations on contractors acting as lead system integrators.

##### 209.570-1 Definitions.

*Lead system integrator*, as used in this section, is defined in the clause at 252.209-7007, Prohibited Financial Interests for Lead System Integrators. See PGI 209.570-1 for additional information.

##### 209.570-2 Policy.

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 2410p prohibits any entity performing lead system integrator functions in the acquisition of a major system by DoD from having any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) The prohibition in paragraph (a) of this subsection does not apply if—

(1) The Secretary of Defense certifies to the Committees on Armed Services of the Senate and the House of Representatives that—

(i) The entity was selected by DoD as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(ii) DoD took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) The entity was selected by a sub-contractor to serve as a lower-tier sub-contractor, through a process over which the entity exercised no control.

(c) In accordance with Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), DoD may award a new contract for lead system integrator functions in the acquisition of a major system only if—

(1) The major system has not yet proceeded beyond low-rate initial production; or

(2) The Secretary of Defense determines in writing that it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead system integrator functions and that doing so is in the best interest of DoD. The authority to make this determination may not be delegated below the level of the Under Secretary of Defense for Acquisition, Technology, and Logistics. (*Also see* 209.570-3(b).)

(d) Effective October 1, 2010, DoD is prohibited from awarding a new contract for lead system integrator functions in the acquisition of a major system to any entity that was not performing lead system integrator functions in the acquisition of the major system prior to January 28, 2008.

[73 FR 1824, Jan. 10, 2008, as amended at 74 FR 34268, July 15, 2009]

#### 209.570-3 Procedures.

(a) In making a responsibility determination before awarding a contract for the acquisition of a major system, the contracting officer shall—

(1) Determine whether the prospective contractor meets the definition of “lead system integrator”;

(2) Consider all information regarding the prospective contractor’s direct financial interests in view of the prohibition at 209.570-2(a); and

(3) Follow the procedures at PGI 209.570-3.

(b) A determination to use a contractor to perform lead system integrator functions in accordance with 209.570-2(c)(2)—

(1) Shall specify the reasons why it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead system integrator functions, including a discussion of alternatives, such as use of the DoD workforce or a system engineering and technical assistance contractor;

(2) Shall include a plan for phasing out the use of contracted lead system integrator functions over the shortest period of time consistent with the interest of the national defense; and

(3) Shall be provided to the Committees on Armed Services of the Senate and the House of Representatives at least 45 days before the award of a contract pursuant to the determination.

[74 FR 34268, July 15, 2009]

#### 209.570-4 Solicitation provision and contract clause.

(a) Use the provision at 252.209-7006, Limitations on Contractors Acting as Lead System Integrators, in solicitations for the acquisition of a major system when the acquisition strategy envisions the use of a lead system integrator.

(b) Use the clause at 252.209-7007, Prohibited Financial Interests for Lead System Integrators—

(1) In solicitations that include the provision at 252.209-7006; and

(2) In contracts when the contractor will fill the role of a lead system integrator for the acquisition of a major system.

#### 209.571 Organizational conflicts of interest in major defense acquisition programs.

##### 209.571-0 Scope of subpart.

This subpart implements section 207 of the Weapons System Acquisition Reform Act of 2009 (Pub. L. 111-23).

[75 FR 81913, Dec. 29, 2010]

##### 209.571-1 Definitions.

As used in this section—

“Lead system integrator” is defined in the clause at 252.209-7007, Prohibited